In the Supreme Court
of the United States

THE STATE OF OREGON,
Respondent,

vs.

GEORGE F. SACK,
Appellant.

MOTION TO DISMISS JURISDICTIONAL STATEMENT

Appeal from the Supreme Court of the State of Oregon.

BRIEF FOR RESPONDENT IN OPPOSITION

In compliance with Rule 16 of this Court, Appellee in the above-entitled case moves to dismiss on the grounds that the appeal has not been taken in time and that the question presented is so unsubstantial as not to need further argument.

OPINION BELOW

The opinion of the Oregon Supreme Court is reported in "Oregon Advance Sheets, Volume 62, # 21, pp. 1271-1301, July 11, 1956," and is contained as Appendix A of Jurisdictional Statement.

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JURISDICTION

Respondent represents to the Court as follows:

1. Appeal has not been taken within ninety (90) days (United States Supreme Court Rules, Rule 11 (1)).

   (a) The above-entitled cause was argued and submitted to the Oregon Supreme Court on April 18, 1956, and the opinion rendered on July 11, 1956,

   Appellant filed petition for rehearing, which the Oregon Supreme Court denied on September 6, 1956; therefore the last day for filing an appeal to this Court was on December 5, 1956.

   (b) Part of the Notice of Appeal to this Court was filed on December 6, 1956, and part on December 7, 1956, and that more than ninety (90) days had passed (Rule 11 [1]) after entry of judgment denying rehearing (September 6, 1956), by the Oregon Supreme Court.

   (c) The period for appeal had not been extended by a Justice of this Court.

THEREFORE, it appears that the Appellant's application for an Appeal is out of time and should be denied.

2. The question presented is so unsubstantial as not to need further argument.

(a) The VI Amendment to the United States Constitution applies only to action by the Federal Government and is not applicable to a State appeal, and that Article I, Section 11 of the Oregon Constitution is not a Federal question and therefore not reviewable by this Honorable Court.

The XIV Amendment to the United States Constitution has not been violated.

ARGUMENT

There is no showing by the record that Defendant was denied a fair or impartial trial (Jurisdictional Statement, Appendix "A," pages 27, 28, 29), but to the contrary the Appellant made the unusual contention that he was prejudiced by the fact that he was denied to have excused jurors serve, if they had not been prejudiced.

The Oregon Supreme Court held (Jurisdictional Statement, Appendix "A," page 27), "the trial court did not err in denying motion for a directed verdict."

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Jurisdictional Statement should be denied and the appeal dismissed.

Respectfully submitted,

J. RAYMOND CARSKADON,
Counsel for Respondent.

April 10, 1957